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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.D., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. A.D., Defendant and Appellant.	D059664 (Super. Ct. No. J227737)

APPEAL from a judgment of the Superior Court of San Diego County, Carolyn Caietti, Judge. Affirmed.

The court found true count 1 of the juvenile wardship petition that A.D. (sometimes "Minor") possessed a knife on school grounds, a misdemeanor. (Pen. Code, § 626.10, subd. (a), hereafter section 626.10(a).) A.D. was declared a ward of the court and placed on probation with various terms and conditions. On appeal, Minor contends (1) there was insufficient evidence to support the juvenile court's true finding; and (2) the

court misunderstood the mens rea of section 626.10(a) and in rendering its findings failed to find Minor had knowledge the knife was in his possession.

I

FACTS

On September 30, 2010, A.D. was a 14-year-old eighth grader who liked and collected knives. On September 18, A.D.'s mother purchased a Winchester-shaped wood knife with a locking blade for the Minor because he was participating in Boy Scout activities.

On the weekend prior to September 30, A.D. went to stay at his grandmother's house for four or five days. A.D. took his backpack containing the newly acquired knife, some clothing and various school items to his grandmother's house. While A.D. was at his grandmother's house, he was frequently in and out of the backpack to remove socks and underwear. A.D. used his backpack on a daily basis at school. Throughout the school day, A.D. would go in and out of the backpack to take out whatever he needed for class. A.D. never completely emptied his backpack while staying at his grandmother's house.

Scott Scarbrough was A.D.'s second period middle school history teacher. On Thursday, September 30, approximately five minutes into class, Scarbrough received a note requesting that he send A.D. to the school office. Scarbrough gave A.D. a pass and A.D. left the classroom. A.D. left his binder and backpack by his classroom desk. Typically students sent to the office return to class within 10 to 15 minutes, but A.D. did

not return before the other students began to pack their belongings as the class drew to a close.

Since Scarbrough was not going to be in the classroom during the next class period, he followed standard school protocol and began to pack A.D.'s belongings to take them to the school office for later retrieval by A.D. Scarbrough took A.D.'s binder, which was sitting on his desk, opened the flap of A.D.'s unzipped backpack and saw a stainless steel retractable knife with a brown handle, in the locked and closed position, sitting on top of other items in the backpack. The backpack was average in size. Scarbrough did not take the knife out of the backpack or handle it in any fashion. Instead, he quickly closed the backpack, as he did not want other students to see the knife. When the class bell rang and the other students left the classroom, Scarbrough walked the backpack to the school office and reported the incident to the assistant principal, Kirk Hoeben. Hoeben took the backpack from Scarbrough and retrieved the knife from the main pocket of the backpack where books would be kept. Hoeben called A.D.'s mother and informed her that he had found a knife in A.D.'s backpack. A.D. told school officials he had forgotten that the knife was in his backpack.

The school placed a call to the sheriff's office, and Deputy Sheriff Alton Cornelius responded. Cornelius collected the knife found in A.D.'s backpack, which Cornelius described as a three-inch folding knife with a locking blade. A.D. told Cornelius the knife which Scarbrough found belonged to him, that his mother had given it to him and that he had placed the knife in the backpack. A.D. also told Cornelius he did not know the knife was in the backpack.

II

DISCUSSION

Minor makes two arguments on appeal. First, Minor asserts there was insufficient evidence to establish that he *knew* he brought the knife onto school grounds, as required by section 626.10(a).[1] Second, Minor claims the juvenile court did not understand the mens rea of section 626.10(a) and failed to make the required finding that he knew the knife was in his possession. We address each of these contentions in turn.

A. *Sufficiency of the Evidence to Prove A.D. Knew the Knife Was in His Possession*

Section 626.10(a) makes it a crime to *bring or possess* a folding knife with a locking blade, or a knife with a blade longer than two and a half inches, onto the grounds of a middle school.[2] (See *In re T.B.* (2009) 172 Cal.App.4th 125; *In re Rosalio S.* (1995) 35 Cal.App.4th 775.)

The People's theory in this case was that A.D. constructivly possessed the knife in his backpack. Under this theory, the People bore the burden of proving that A.D. had *knowledge* that the knife was in his possession on school grounds. "Constructive possession means the object is not in the defendant's physical possession, but the

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1 A.D. does not contest the sufficiency of any other element of the section 626.10(a) offense.

2 Section 626.10(a) provides in relevant part: "(1) Any person, . . . , *who brings or possesses any . . . knife having a blade longer than 2½ inches, folding knife with a blade that locks into place*, . . . upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year . . . ." (Italics added.)

defendant *knowingly* exercises control or the right to control the object." (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831; see also *People v. Mejia* (1999) 72 Cal.App.4th 1269, 1272-1273 (*Mejia*).) The fact of knowledge is rarely susceptible of direct proof but must generally be established by circumstantial evidence and the reasonable inferences to which it gives rise. (*People v. Lewis* (2001) 26 Cal.4th 334, 379; *In re Tony C.* (1978) 21 Cal.3d 888, 900, superseded by statute on other grounds as stated in *In re Christopher B.* (1990) 219 Cal.App.3d 455, 460.)

In reviewing a claim that insufficient evidence supports a juvenile court's true finding, we review the entire record in the light most favorable to the judgment to determine whether it contains "'"substantial evidence — that is, evidence which is reasonable, credible, and of solid value"'" from which a trier of fact could have found Minor guilty of the crime beyond a reasonable doubt. (*People v. Welch* (1999) 20 Cal.4th 701, 758; *In re V.V.* (2011) 51 Cal.4th 1020, 1026; *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1328.) We presume "in support of the judgment the existence of every fact the [juvenile court] could reasonably deduce from the evidence." (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) If two conflicting inferences may be drawn from the evidence, we must resolve the conflict in favor of the juvenile court's ruling. (*People v. Harvey* (1984) 151 Cal.App.3d 660, 667.) And, when the appellant's claim is that the conviction below was based on insufficient evidence of one or more of the elements of the crime, we *must* begin with the presumption that the evidence of those elements *was* sufficient, and the appellant bears the burden of convincing us otherwise. (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

In looking at the evidence in the light most favorable to the judgment, and presuming all reasonable inferences in favor of the lower court's ruling, we believe there are several facts from which a rational finder of fact could have determined that A.D. knew he possessed a knife in his backpack at school and had violated section 626.10(a). First, A.D. put the newly acquired knife in his backpack when he went to stay for an extended visit with his grandmother. Second, A.D. never emptied the contents of his backpack, and had retrieved both personal and school items from the backpack during his nearly week-long visit. Third, from Monday to Thursday morning when the knife was found, A.D. had been in and out of the backpack at school to retrieve items needed for various classes. Fourth, A.D. had taken his binder from the backpack for his Thursday second period history class, and left that binder on his desk when called to the office. Fifth, at the conclusion of that class A.D.'s teacher found the knife, which was sizable and had a brown handle, sitting in plain view on top of some items in the main compartment of A.D.'s backpack. Like it was to Scarbrough, without the binder in the backpack, the knife would have been easily visible to A.D. From these facts the juvenile court could rationally find that A.D. knew he possessed a knife in his backpack while at school. Accordingly, we find substantial evidence supports the juvenile court's true finding on the section 626.10(a) offense.

Minor's various arguments to the contrary are not persuasive, as he seeks to have us violate the basic tenants of substantial evidence review.

A.D. first argues the knife was packed deep in the backpack, mixed in with clothing and various other school supplies. However, Scarbrough testified the knife was

immediately viewable on top of other items in the backpack. Similarly, A.D. points to testimony that he did not empty the contents of his backpack while at his grandmother's and, because he had no homework that week, did not access its contents at her home. However, contrary to the cited testimony, A.D. also testified he removed socks and underwear from the backpack while at his grandmother's home. As an appellate court conducting a substantial evidence review, we do not reweigh the evidence, judge the credibility of witnesses or resolve conflicts in the evidence. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) We defer instead to the trier of fact for resolution of factual conflicts. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

A.D. next asks us to substitute our evidentiary deductions from that of the juvenile court. Specifically, A.D. argues that when the knife was discovered, some of the contents of his backpack had been removed, thereby making it easier for the teacher to see the knife. Presumably, from this evidence A.D. wishes us to infer that he had not seen, and did not know of the existence of, the knife in his backpack. However, from this evidence an equally reasonable contrary inference could be drawn by the trier of fact — namely, like Scarbrough, A.D. saw the knife and knew it was there when he removed the binder from his backpack. On substantial evidence review, where two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559; *In re Marriage of Guo & Sun* (2010) 186 Cal.App.4th 1491.)

Finally, A.D. points to a number of facts from which he argues that he had no nefarious intent[3] for having the knife at school, and therefore, while he possessed the knife, he paid no attention to it and did not know of its existence in the backpack at school. In this regard, A.D. points to the fact that his mother purchased the knife for his use in Boy Scout activities; he did not try to hide the knife by zipping the backpack when called to the office; and his teacher testified he had no problems with A.D. However, while these facts might reasonably be reconciled with a finding that Minor did not know the knife was in his backpack, in conducting a substantial evidence review we presume the existence of every fact the trier of fact could reasonably infer from the evidence. If the circumstances reasonably justify the trier of facts findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. (*People v. Ramirez* (2006) 39 Cal.4th 398, 463; *People v. Valdez* (2004) 32 Cal.4th 73, 104.)

Accordingly, we find substantial evidence supports the juvenile court's finding that A.D. had knowledge the knife was in his possession.

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3 The crime of bringing or possessing a qualifying knife on school grounds under section 626.10(a) is a general, not specific, intent crime. For example, the statute does not require the specific intent to use the knife as a stabbing weapon. (See generally *People v. Rubalcava* (2000) 23 Cal.4th 322, 328.) A.D.'s *purpose* in possessing the knife at school, *as opposed to his knowledge of its existence*, was immaterial unless it qualified under one of the specific statutory exceptions for a school-sponsored activity, employment purposes or food preparation. (Pen. Code, § 626.10, subds. (c), (d), (e).) A.D. never asserted below, or on appeal, that one of the statutory exceptions applied.

B. *Appellant Fails to Show the Court Failed to Follow the Law*

A.D. argues the juvenile court erroneously believed it was not required to find he knowingly possessed the knife in his backpack on school grounds, and accordingly failed to make the necessary factual finding of knowledge. Specifically, A.D. points to the exchange between counsel in closing as to whether the People were required to prove knowledge as an element of section 626.10(a), and states the court "signaled" its agreement with the People's position that it need not prove knowledge when in ruling it stated that the "People [have satisfied] the burden of proving this case beyond a reasonable doubt . . . for this general intent offense." From this, A.D. deduces the juvenile court did not find A.D. knowingly possessed the knife in his backpack and the case must be reversed.

The general rule is that a court is presumed to have been aware of and followed the applicable law. (Evid. Code, § 664; *Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443 (*Howard*); *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913 (*Ross*).) "Th[e] rule derives in part from the presumption of Evidence Code section 664 'that official duty has been regularly performed.'" (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114.) "The effect of the rebuttable presumption created by section 664 is '"to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."'" (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549.) The presumption applies, unless the law in question was unclear or uncertain when the lower court acted. (*People v. Jeffers* (1987) 43 Cal.3d 984, 1000.) Error must be affirmatively demonstrated. This is not only a basic principle of appellate law, but is also

a basic ingredient of the constitutional doctrine of reversible error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.).

A.D.'s argument that the juvenile court's statement that section 626.10(a) was a general intent offense meant it failed to find he had knowledge the knife was in his backpack is unpersuasive. Merely because the court stated that section 626.10(a) was a general intent crime does *not* mean it did not also understand that knowledge was a necessary element of the People's proof. General intent crimes frequently require some kind of knowledge for proof of the offense. (See *Stark v. Superior Court* (2011) 52 Cal.4th 368, 390 [settled authority teaches that even general intent crimes often require some kind of knowledge].) Moreover, the law of constructive possession has long required that a defendant *knowingly* exercise control or the right to control a prohibited object. (See *In re Daniel G.*, *supra*, 120 Cal.App.4th at p. 831; *Mejia*, *supra*, 72 Cal.App.4th at pp. 1272-1273.) In the absence of affirmative evidence to the contrary, the court is presumed to have understood and correctly applied the law. (See Evid. Code, § 664; *Howard*, *supra*, 10 Cal.4th at p. 443; *Ross*, *supra*, 19 Cal.3d 899 at p. 913.) A.D.'s argument that the court's reference to section 626.10(a)'s status as a general intent crime "signaled" its misunderstanding of the law is insufficient to rebut the presumption of Evidence Code section 664. As error has not been affirmatively demonstrated, we reject A.D.'s appellate position.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P.J.

HALLER, J.